

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 540 of 1999

AND

CIVIL REVISION APPLICATION No 541 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOK BHANUSHANKAR TRIVEDI

Versus

NAGAR PRIMARY SHIKSHAN SAMITI

Appearance:

(In both the matters)

MR TUSHAR MEHTA for the petitioner

MR VIJAY PATEL for the Respondent No.1

None present for other Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 29/03/2000

C.A.V.JUDGMENT

#. As both these civil revision applications are between the same parties and arise in respect of the same dispute though from the different suits, the same are being taken

up for hearing together and are being disposed of by this common judgment.

#. Facts of the case in brief are that the petitioner is a member of the Nagar Prathmik Sikshan Samiti of Bhavnagar Municipal Corporation, Bhavnagar (hereinafter referred as "Committee" for the sake of brevity). The Committee passed a resolution on 12th January, 1999 in exercise of the power purporting to be under sections 5(f), 7(1)(b), 8 and 9 of the Bombay Primary Education Act removing the petitioner from the membership thereof. The petitioner filed the Regular Civil Suit No.17/99 challenging the legality, propriety and correctness of this resolution of the Committee in the court of Civil Judge (Senior Division), Bhavnagar. He prayed for permanent injunction in the suit. During the pendency of the suit aforesaid as the respondents started the procedure for holding the election to fill up vacancy caused due to the removal of the petitioner by publishing the notification dated 15.2.1999 purporting to be under Rule 9 of the Bombay Primary Education Rules, 1949 which gives rise cause to him to file another civil suit in the same court being Regular Civil Suit No.95/99.

#. In both the suits, the petitioner filed an application Exh.5 praying therein for interim relief. Learned trial court in both the suits dismissed the application filed by the petitioner for grant of interim relief under its order dated 20.3.1999. Against the order of the trial court the petitioner preferred two Civil Misc.Appeals being Civil Misc.Appeal No.75/99 and Civil Misc.Appeal No.76/99 which were came to be dismissed under the order dated 24.3.1999 of the Joint District Judge, Bhavnagar. Hence, these two civil revision applications.

#. Mr.Tushar Mehta, learned counsel for the petitioner contended that, the Committee has no power to remove the petitioner from its membership. In his submission, this power lies with the State Government. Mr.Mehta, learned counsel for the petitioner submits that unless the State Government adjudicate and decide that the petitioner incurred disqualification to continue as the member of the Committee, he could not have been removed from the membership of the Committee.

#. It has next been contended by the learned counsel for the petitioner that, before removing the petitioner from the membership of the Committee, he was neither given a notice nor any opportunity of hearing. In his submission, removing of the member from the Committee,

has serious and civil consequences and the authority before ordering for his removal, has to comply with the basic principles of natural justice which in the case in hand has been given total gobye.

#. Lastly, it is contended that, the petitioner filed the suit in which challenge has been made to the resolution of the Committee removing him from the membership and when this matter was subjudice, the Committee should not have taken any action to fill up the vacancy stated to be caused as a result of the removal of the petitioner from the membership thereof. Concluding his submission, Mr.Mehta, learned counsel for the petitioner submits that both the courts below have committed serious procedural irregularity and acted contrary to the provisions of the Bombay Primary Education Act in declining interim relief to the petitioner in the suit. It is a matter of continuation of the petitioner as the member of the Committee and in case in such matter, interim relief is not granted, then very purpose and object of filing of the suits will frustrate after passing of the time. He urges, the suits will have natural death, meaning thereby, on expiry of the term for which the petitioner is elected as member of the Committee, same will become infructuous.

#. Mr.Vijay Patel, learned counsel for the respondent No.1 contended that, the petitioner was not qualified to be elected as the member of the Committee and rightly the Committee has taken the decision to remove him from the membership. In fact, Mr.Patel contended that, disqualification of the petitioner to hold the office of the member of the Committee is apparent and undisputed and the petitioner himself should have resign from the office rather than to drag the respondent No.1 in the litigation.

#. Mr.Patel urges that, the Committee is well within its power, competence and authority to pass the resolution to remove the petitioner from the membership of the Committee. The State Government does not come in the picture in such matter.

#. It has next been contended that, even if it is taken that the principles of natural justice has not been followed while passing the resolution by the Committee of the removal of the petitioner from the membership thereof, in the presence of the admitted fact that the petitioner is disqualified from holding the office of the member of the Committee, it would have been only empty formality. Concluding his submission, Mr.Patel, learned

counsel for the respondent No.1 submits that, the suits are not maintainable as per his own say that the State Government is only competent authority to decide all these matters and he should have approached to the State Government.

##. I have given my thoughtful considerations to the rival contentions, submissions and arguments advanced by both the learned counsel appearing for the petitioner and the respondent No.1.

##. Grant of temporary injunction or interim relief in the suit filed by the litigant is a discretion of the court. The powers to grant of temporary injunction or interim relief are confer upon the courts under Order 39 Rule 1 and 2 and Section 151 of the Civil Procedure Code, 1908. Reading of these two provisions reveal that, it is absolutely a discretionary relief and same cannot be granted to the litigant as a matter of right or rule.

##. While considering the prayer for grant of temporary injunction or interim relief pending the suit, the court has to consider that the party praying for the same has made out prima facie case, that in case the interim relief as prayed for is not granted, it will result in causing irreparable injury to him which cannot be compensated in terms of money and lastly the balance of convenience also favours grant of the same. It is no more res integra that merely because the litigant praying for temporary injunction or interim relief has prima facie case in his favour alone is not sufficient for grant of temporary injunction or interim relief unless on all the three aforesaid ingredients the court is satisfied and then only temporary injunction or interim relief as prayed for can be ordered, but not otherwise.

##. I do not find any merit or substance in the contention of the learned counsel for the petitioner that in case in such matter temporary injunction or interim relief is not granted, then very purpose and object of filing of the suit will be defeated or by passing of the time the suit shall become infructuous. The acceptance of this contention of the learned counsel for the petitioner results thereof would have been that in the suits of this nature, a rule is to grant temporary injunction or interim relief which is neither law nor rule. At the cost of repetition, it is to be stated that Order 39, Rule 1 and 2 and Section 51 of the Civil Procedure Code, no more make it imperative for the courts that prayer made in such suit for grant of temporary injunction or interim relief has to be accepted. If,

this meaning of this provision is taken then the court will distort the same.

##. This matter pertains to the office of the membership of the Committee and where the court considers that the litigant has not made out the case for grant of temporary injunction or interim relief, it has to give priority to the suit in hearing. In such suit, by passing of the time possibility of its having become infructuous cannot be overruled. The decision giving at the stage of considering the application of the litigant for grant of temporary injunction or interim relief, the court is not deciding the matter finally. The decision given by the court and the findings recorded to give the same at this stage are not final and conclusive. Still there may be a chance of success of the litigant in the suit on merits at final stage. The chances and possibilities of success of the petitioner in the suits cannot be overruled. He may not be succeeded in getting temporary injunction or interim relief, but he may get success in the suits. If, the suits are not decided before the term of the office for which the petitioner is elected as the member of the Committee is expired then litigant will go with the feeling that he has not got the justice or his litigant has become redundant by lapse of time. In case the litigant is not protected by grant of temporary injunction or interim relief, it is the concern of the court to see that within a reasonable time the suit may be disposed of. Looking to the dispute raised in the suit, I have my own reservation that much quantum of the evidence may not be necessary from both the sides as what it is expected to be in property disputes. The matter may substantially depend upon documentary evidence. With the consent of the parties, such suit may possibly be decided by taking evidence on affidavits. So this contention and grievance made by the learned counsel for the petitioner have some relevance and justification for prayer for early disposal of the suit itself.

##. The order of the authority whether it is administrative or quasi judicial, if ensues civil consequences by passing the same, the principles of natural justice are to be followed. On this principle there may not be any quarrel, but in every case where the litigant comes up before the court with this grievance, it is not a rule that relief has to be granted on this ground. Before proceeding further on this question raised by the learned counsel for the petitioner, I consider it to be appropriate to have reference to the relevant provisions of the Bombay Primary Education Act, 1947. Section 5 of the Act aforesaid provides that, no

person shall be elected, appointed or nominated a member of a school board who has, directly or indirectly, by himself or his partner, any share or interest in any work done by the order of, or in any contract entered into on behalf of the school board or electing local authority etc. Section 7 of the Act aforesaid lays down that, if any member of a school board, during the term for which he has been elected, appointed or nominated becomes subject to any of the disqualifications mentioned in Section 5, he shall be disabled from continuing to be a member of such board and his seat shall be deemed to have become vacant. Section 6 of the Act aforesaid is also relevant for appreciation of these arguments of the learned counsel for the petitioner and the same reads as under.:

"(1) If the validity of the election of a member of a school board is brought in question by an unsuccessful candidate or by any person qualified to vote at the election, such person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the District Judge of the district within which the election has been or should have been held for the determination of such question.

(2) An enquiry shall thereupon be held by a Judge not below the grade of an Assistant Judge and such Judge may, after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or setting the election aside. For the purposes of the said enquiry, the said Judge may exercise any of the powers of a civil court, and his decision shall be conclusive. If he sets aside an election, a date shall forthwith be fixed, and necessary steps taken for holding a fresh election.

(3) All applications received under sub-section (1)-

(a) in which the validity or the election of members is in question shall as far as possible, be heard by the same Judge, and

(b) in which the validity of the election of the same member is in question shall be heard together.

- (4) Notwithstanding anything contained in the Code of Civil Procedure 1908, the Judge shall not allow (a) any application to be compromised or withdrawn, or
- (b) any pleadings in the proceedings to be altered or amended, unless he is satisfied that such application, alteration or amendment is bonafide and not conclusive.
- (5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of sub-section (6), he shall declare the candidate disqualified both for the purpose of that election and of such fresh election as may be held under sub-section (2), and shall set aside the election of such candidate if he has been elected.
- (b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall after a scrutiny and computation of the votes recorded in favour of each such candidates, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

- (6) A person shall be deemed to have committed a corrupt practice-
- (a) who, with a view to inducing any voter to give or refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit or holds out any threat of injury to any person; or
- (b) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote;

and a corrupt practice shall be deemed to have

been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.- The expression "a promise of individual profit".

- (i) does not include a promise to vote for or against any particular measure which may come before a school board for consideration, but
 - (ii) subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.
- (7) If the validity of the election is brought in question only on the ground of an irregularity or informality which has not materially affected the result of the election or which has not been corruptly caused, the Judge shall not set aside the election.
- (8) If the Judge sets aside an election under clause (a) of sub-section (5) he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of sub-section (6) to be disqualified from being a member of any school board for a term of years not exceeding five and the decision of the Judge shall be conclusive :

Provided that no such declaration shall be made in respect of any person without such person being given an opportunity to show cause why such declaration should not be made :

Provided further that such person may by an order of the (State) Government in that behalf be at any time relieved from such disqualification.

##. The plaintiff - petitioner had taken the contract of the Municipal Corporation. Evidence to this effect is produced on the record by the respondent, though in the form of affidavits. The plaintiff - petitioner has not denied the facts of getting the said contract by filing counter affidavit nor has produced any evidence to show that before getting that contract, the plaintiff-petitioner had obtained the permission from the

State Government. In the presence of these admitted facts, it is no more remain in doubt that the petitioner has incurred or suffered disqualification as laid down in Section 5 of the Act, 1947 to become the member of the Committee. In the civil revision application the petitioner has not controverted these factual aspects nor during the course of the arguments the learned counsel for the petitioner stated that factual aspects taken by the courts below are incorrect. The matter does not rest here, but during the course of the arguments, Mr.Mehta, learned counsel for the petitioner has also not disputed this part of the order of the first appellate court.

##. On being put by the court what defence would have been there of the petitioner in this matter in case notice or opportunity of hearing would have been given to him, learned counsel for the petitioner is unable to give out any defence. It is true that, principles of natural justice has not been followed in the present case, but bare noncompliance thereof itself may not be a ground in every case for setting aside the resolution of the Committee, that too, to the extent where to permit to the petitioner to continue as member of the Committee. Ultimately the concern of the court is to do substantial justice and further to decide the matter having justice oriented approach. While dealing with a matter, the courts are not to be influenced with the technicalities plea raised and relief has to be granted merely on demonstration of the breach of some provisions of law or principles of natural justice by the counsel where acceptance of that contention result would have been to continue illegal things to go on and in the present case to continue the petitioner as member of the Committee, though otherwise he is disqualified to hold the office.

##. Here, fruitfully reference may have to the latest pronouncement of the Honourable Supreme Court in the case of MC Mehta Vs Union of India, JT 1999(5) SC 114. The apex court held;

"....It is true that, whenever there is a clear violation of principles of natural justice, the Courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this court because the orders of the department were consequential to orders of this Court. Question however is whether the court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the

ground that no de facto prejudice is established. On the facts of this case, can this court not take into consideration the fact that any such declaration regarding the 10.3.1999 order will restore an earlier order dated 30.7.1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10.3.1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the latter order of this Court dated 7.4.98?

Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused even though there was breach of natural justice. The first one is Gadde Venkateswara Rao V. Government of Andhra Pradesh and others (1996 (2) SCR 172). There the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25.8.1960 to locate a primary health centre at Dharmajigudem. Later, it passed another resolution on 29.5.1961 to locate it at Lingapalem. On a representation by villagers of Dharmajigudem, government passed orders on 7.3.1962 setting aside the second resolution dated 29.5.1961 and thereby restoring the earlier resolution dated 25.8.1960. The result was that the health centre would continue at Dharmajigudem. Before passing the orders dated 7.3.62, no notice was given to the Panchayat Samithi. This court traced the said order of the government dated 7.3.1962 to Section 62 of the Act and if that were so, notice to the Samithi under section 62(1) was mandatory. Later, upon a review petition being filed, government passed another order on 18.4.1963 cancelling its order dated 7.3.62 and accepting the shifting of the primary centre to Lingapalem. This was passed without notice to the villagers of Dharmajigudem. This order of the government was challenged unsuccessfully by the villagers of Dharmajigudem in the High Court. On appeal by the said

villagers to this court, it was held that the latter order of the government dated 18.4.1963 suffered from two defects, it was issued by Government without prior show cause notice to the villagers of Dharmajigudem and government had no power of review in respect of government orders passed under section 62(1). But that there were other facts which disentitled the quashing of the order dated 18.4.63 even though it was passed in breach of principles of natural justice. This Court noticed that the setting aside of the latter order dated 18.4.63 would restore the earlier order of Government dated 7.3.62 which also passed without notice to the affected party, namely, the Panchayat Samithi. It would also result in the setting aside of a valid resolution dated 29.5.61 passed by the Panchayat Samithi. This court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, J. (as he then was) observed (p.189) as follows :

"Both the orders of the government, namely, the order dated March 7, 1962 and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under section 72 of the Act to review an order made under section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village.

His Lordship concluded as follows :

"In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

The above case is clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law.

We would next refer to another case, where, though there was no breach of principles of natural justice, this court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In *Mohammad Swalleh & Others v. Third Addl. District Judge, Meerut and Another* (JT 1987 (4) SC 291), which arose under the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of section 43(2)(rr) of the Act. The District Court, entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the District Judge was correct as that would have restored the order of the prescribed authority, which was illegal.

Learned senior counsel for Bharat Petroleum contended that once natural justice was violated, the court was bound to strike down the orders and there was no discretion to refuse relief and no other prejudice need be proved.

It is true that in *Ridge v. Baldwin* 1964 AC 40, it has been held that breach of principles of natural justice is in itself sufficient to grant

relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this court in several cases but we might point out that this court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J. in S.L.Kapoor v. Jagmohan 1980(4) SCC 379. After stating (p.395) that 'principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed' and that 'nonobservance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary', Chinnappa Reddy J also laid down an important qualification (p.395) as follows :

"As we said earlier, where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice but because Courts do not issue futile writs."

It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice.

Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corporation 1971(1) WLR 1578, (per Lord Reid and Lord Wilberforce), Glynn v. Keele University 1971 (1) WLR 87, Cinnamond v. British Airport Authority 1980 (1) WLR 582 and other cases where such a view has been held. The latest addition to this view is R v. Ealing

Magistrates' court exp. Fannaran (1996)8 Admn.L.R. 351 (358) (See DeSmith, Suppl.p.89) (1998) where Straughton L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMahon 1987 (2) WLR 821 (862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner Administrative Law (8th Edition 1996, PP.271-272) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin, Megarry J. in John v. Rees 1969 (2) WLR 1294 stating that there are always open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the Court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the 'useless formality' theory in R v. Chief Constable of the Thames Valley Police Forces exp. Cotton 1990 IRLR 344 by giving six reasons. (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H.Clark of Canada (see 1975 PL pp.27-63) contending that Malloch and Glynn were wrongly decided. Foulkes (Administrative Law, 8th Ed.1996, P.323), Craig (Administrative Law, 3rd Ed.P.596) and others say that the Court cannot prejudice what is to be decided by the decision making authority. DeSmith (5th Ed.1994 paras 10.031 to 10.036) says Courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (Administrative Law, 5th Ed.1994, PP.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or

indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K.Sharma (JT 1996(3) SC 722), Rajendra Singh v. State of M.P. (JT 1996(7) SC 216), that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it can not be waived.

We do not propose to express any opinion on the correctness or otherwise of the "useless formality" theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, "admitted and indisputable" facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.

In our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the Court, it becomes mandatory for the Court to restore the status quo ante prevailing on the date of its first order. Restitution is a must. Further Bharat Petroleum having got back its plot at the Ridge it cannot lay further claim to the one at San Martin Marg which was given to it only in lieu of the Ridge plot. Similarly, HPCL has to get back its plot in San Martin Marg inasmuch, otherwise, it will have none and Bharat Petroleum will have two. Bharat Petroleum cannot retain the advantage which it got from an order of this Court which has since been withdrawn. Thus what is permissible and what is possible is a single view and the case on hand comes squarely within the exception laid down by Chinnappa Reddy, J. in

In the case in hand, there is no reply affidavit of the petitioner nor the evidence that he was not disqualified to hold the office of the member of the Committee. In these facts, if on this complaint of violation of the principles of natural justice in making the resolution by the Committee for removal of the petitioner as member thereof, the same is quashed and set aside, then what we do is to continue to the petitioner as the member of the Committee. The courts while sitting under Article 226 of the Constitution or the courts subordinate to the High Court sitting in their original jurisdiction may not perpetuate illegalities. Once court is satisfied on facts that the action taken against the litigant by the authority may not be in accordance with the law, but result of the quashing thereof is to restore any illegal order or to continue a person to be the member of the Committee, though otherwise he is disqualified, it can legitimately decline to grant the relief to the litigant.

##. In the facts of this case which are not in dispute, the petitioner has failed to make out any prima facie case in his favour. Only on this ground the court could have and what it has been done declined to grant temporary injunction or interim relief to the petitioner. Other two ingredients in the matter, where prima facie case is not made out, needs not to be considered by the court, but if still it is to be considered then the balance of convenience does not favour the grant of temporary injunction or interim relief in the matter. Whether the authority who passed the order is competent or not, is not relevant or lost its relevancy in a matter where the petitioner himself is found to be disqualified person to hold the office of the member of the Committee. A litigant who comes before the court to seek interim relief in its discretionary powers, has first to establish that he is legally qualified to hold the office. A litigant who complains against the alleged illegality said to be committed by the authority or the violation of the principles of natural justice, first he has to satisfy to the court that he is legally qualified to hold the office wherefrom he is resolved to be dislodged.

##. These civil revision applications are wholly misconceived and frivolous. It is in fact an attempt on the part of the petitioner to abuse the process of the court for his own benefits. The courts are facing problems how to over come this high pendency of the

matters and in case indiscriminately litigations are coming up, naturally the persons who have come up with real and genuine cases are to suffer. It is equally a duty of the every litigant to be very cautious and careful to approach to the court. He should have been fully satisfied that he has a good case. The advocate also before filing any proceeding in the court should have satisfied that in the case arguable points are there and if it is done then possibilities of coming up before the court of the frivolous and baseless cases may not be there and the cases of those bonafide litigants who have come up with their genuine and just cause may not be suffered. In the result, these civil revision applications fail and same are dismissed. Rule discharged. Interim relief, if any, granted stand vacated. The petitioner is directed to pay Rs.1000/- as costs of each civil revision application to the respondent No.1.

(pathan)